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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,930	04/13/2004	Andrew Long	KCC 4994 (K-C 20,135)	4434
321	7590	07/12/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/822,930	<b>Applicant(s)</b> LONG ET AL.	
	<b>Examiner</b> Laura C. Hill	<b>Art Unit</b> 3761	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 June 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-53.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

1. The rejection of claims 1-2, 11, 17, 20 and 27 as being anticipated under 102(b) by Ahr et al (US 5,997,520) is maintained. Applicant argues that Ahr et al. fails to disclose: (a) a urine-permeable inflatable envelope; (b) a surfactant in the envelope; and (c) a system capable of generating carbon dioxide upon being wetted with urine as required by claim 1 (page 2, After Final Amendment).

Ahr et al. discloses (a, c) an expandable component 210 contained within a breakable packet 500 that is broken by the wearer or diaperer squeezing the packet at any desired time at the point of use (not limited to just prior to use) of diaper 20 (column 11, lines 15-17). Examiner maintains that any squeezing force or pressure will activate the packet, including force from the user's urination. Ahr et al. further discloses a gas permeable and hydrophobic envelope 290 which is capable of being urine or liquid-permeable since the envelope is broken by a squeezing force that includes liquids such as urine (column 2, lines 64-65). Permeability and hydrophobicity are unrelated issues and therefore a material is capable of being at least partially liquid permeable even if it is hydrophobic since the material can contain pores that allow the passage of liquid therethrough (i.e. a spunbond hydrophobic polypropylene as used for the Ahr et al. envelope 290 in column 12, lines 39-41 is capable of containing at least enough pores which allow urine to pass through).

As discussed in the 'Response to Arguments' section of the Final Office Action, Ahr et al. discloses (b) gas-generating system 300 that interacts with activating materials 400 that include a surfactant to yield carbon dioxide when activated by the user as discussed above. A 'surfactant' is interpreted to include any substance that when added to a liquid, reduces its surface tension and thereby increases its spreading and wetting properties (Britannica Online Encyclopedia). Applicant states that the 'surfactant component located in the urine-permeable inflatable envelope is present as a foaming agent' (specification, page 13, paragraph 0036) but does not define the surfactant as being limited to only a foaming agent with bubbles by the language of claim 1. Therefore the 'surfactant' is given its broadest reasonable interpretation as defined above and can be any substance that alters surface tension. Ahr et al. discloses the second activating materials 400 comprise water or a powdered acid such as citric acid, tartaric acid, terephthalic acid, and salicylic acid that can be dissolved in water (column 11, lines 38-50). Examiner maintains that the acid/water combination taught by Ahr et al. meets the 'surfactant' requirements since it inherently reduces the surface tension of the liquid from first material 300 by addition of the acid. In response to Applicant's argument that Ahr et al. does not expressly disclose not include a surfactant as a foaming agent with bubbles on page 4 of the After Final Amendment dated 28 June 2005, the limitations on which the Applicant relies are not stated in the claims as discussed in the Response to Arguments section dated 5 May 2005. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

2. The rejection of Claim 33 as being anticipated under 102(b) by Glaug et al. (US 5,649,914) is maintained. Applicant argues that 'Glaug et al. fails to disclose any inflatable envelope' (page 7, After Final Amendment). Examiner points out that pad 50 has wet sensation layer, temperature change member 54, and dimensional change agents which cause the system to swell to provide the wearer with a noticeable or warm sensation upon being wetted with urination (column 5, lines 14-24 and column 8, lines 50-54). The swelling is an act accomplished when a gas is produced and is equivalent to a inflatable envelope.

3. The rejection of Claims 3-10, 12-13, 16, 22-26, 28-29 and 32 under 103(a) as being unpatentable over Ahr et al. is maintained for the reasons set forth as discussed above with respect to claim 1.

4. The rejection of Claims 1-2 and 16-21 under 103(a) as being unpatentable over Slavtcheff et al. (WO 01/56542) is maintained. Applicant argues that Slavtcheff et al. fails to disclose an absorbent article with multiple layers as required by claim 1 (page 10, After Final Amendment). Slavtcheff et al. discloses a wipe which is an absorbent article as discussed in the Final Office Action. In response to Applicant's arguments, the functional recitation that the article is 'for alerting a wearer to urination' has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6<sup>th</sup> paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. In re Fuller, 1929 C.D. 172; 388 O.G. 279. Examiner also notes that the claim language does not expressly disclose not include the limitation that the surfactant or the system capable of generating carbon dioxide be contained within the inflatable envelope.

5. The rejection of Claims 34-45 and 48-53 under 103(a) as being unpatentable over Glaug et al. in view of Ahr et al. is maintained for the reasons set forth as discussed above with respect to claim 33. Examiner maintains that there is a motivation to combine the references since Ahr et al. and Glaug et al. are analogous art because they are in the same field of endeavor; absorbent articles that contain expandable components and wetness indicators for the user.

LC Hill

**TATYANA ZALUKAEVA**  
**PRIMARY EXAMINER**

*Zaluka*

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT

PAPER

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